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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FYKE FARMER,
Petitioner,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Respondent.

PETITIONERS JURISDICTIONAL STATEMENT

FYKE FARMER,
1122 Stahlman Building
Nashville, Tennessee 37201
Pro Se

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QUESTIONS PRESENTED

1. Did the Supreme Court of Tennessee without authority under the state constitution by a rule dated December 18, 1975* integrate the bar of the state in violation of the due process and equal protection of the laws clauses of the Fourteenth Amendment to the United States Constitution?

2. Did the Supreme Court of Tennessee by the aforesaid rule arrogate to itself absolute and unrestrained discretion to withdraw the right or privilege of duly licensed lawyers members of the state bar to practice law in the courts of the state in breach of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

3. Did the Supreme Court of Tennessee in a proceeding initiated by the judges acting personally, privately and unofficially, secretly and furtively suspend appellant, a duly licensed lawyer member of the state bar, from practicing law in the courts of the state for an unjustifiable cause, thereby depriving him of his liberty, property and reputation protected by Article I, Secs. 8 and 17 of the Tennessee Constitution and the due process and equal protection clauses of the United States Constitution?

4. Do the actions and orders of the Supreme Court deciding on appeal of the cause which it initiated below and in which the judges were personally interested in the event deny appellant the right to trial before an impartial court, both in the first instance and on appeal in violation of Article VI, Sec. 11 of the state constitution and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

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* When Rule 42 was adopted the disciplinary board was styled The Disciplinary Board of the Supreme Court of Tennessee. Subsequently the number of the Rule was changed to Rule 9 and the board's name was changed to Board of Professional Responsibility of the Supreme Court of Tennessee, the name of the present defendant.

5. Do the actions and orders of the Supreme Court of Tennessee aforesaid constitute state action impairing the obligation of a contract between the State of Tennessee and appellant in violation of Article I, Sec. 20 of the state constitution and Article I, Sec. 10 of the United States Constitution?

6. Do the actions and orders of the Supreme Court of Tennessee constitute a denial to the right of licensed lawyers of the state, including appellant, and the general public as well, to a republican form of government within the guaranty of Article IV, Section 2, of the United States Constitution?

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PETITIONERS JURISDICTIONAL STATEMENT

OFFICIAL REPORT OF OPINIONS

The Report of the promulgation of Rule 42 appears as *Petition of TENNESSEE BAR ASSOCIATION for an order requiring annual License Fee of All Practicing Attorneys for Disciplinary Purposes, and (2) Petition of Certain Lawyers for Organization of the State Bar* 532 S. W. 2d 224 (Dec. 18, 1975).

The Opinion disciplining appellant appears as *Fyke Farmer, Appellant v. Board of Professional Responsibility of the Supreme Court of Tennessee, Appellee,* 660 S.W. 2d 490, Advance Sheets January 17, 1984.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The proceeding was a disciplinary proceeding in the state courts against appellant.

The judgment of the Supreme Court of Tennessee was entered November 7, 1983. Rehearing was denied December 5, 1983.

Notice of Appeal was filed in the Tennessee Supreme Court December 7, 1983.

By the test applied in *Lathrop v. Donohue*, 367 U.S. 820, 6 L. ed.2d 1191, 81 S. Ct. 1826, the order of the Supreme Court integrating the bar was of legislative character and constituted a "statute" for the purpose of an appeal from the judgment rendered by the highest court of the state. The Court has jurisdiction of this appeal under *28 U.S.C. Sec. 1257(2)*.

If it should be held that the appeal from the State Court was improvidently taken and that the proper mode of review was by a petition for certiorari, then jurisdiction is invoked under *28 U.S.C. Sec. 2103*.

CONSTITUTION OF TENNESSEE
ARTICLE I
DECLARATION OF RIGHTS

Art. I Sec.1—All power is inherent in the people, and all free governments are founded on their authority.

Art. I Sec. 2—The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

Art. I Sec. 8. No man to be disturbed but by law.—That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

Art. I Sec. 17. Open Courts—Redress of injuries—Suits against the State—That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.

Art. I Sec. 20. No retrospective laws.—That no retrospective law, or law impairing the obligations of contracts, shall be made.

Art. II, Sec. 1—the powers of Government shall be divided into three departments; the Legislative, Executive, and Judicial

Art. II, Sec. 2—No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted

Art. III, Sec. 3—The Legislative authority of this State shall be vested in the General Assembly

Art. II, Sec. 28—The Legislature shall have the power to tax merchants, peddlers and privileges, in such manner as they may from time to time direct

Art. III, Sec. 1,—The Supreme Executive power of this state shall be vested in a Governor

Art. VI, Sec. 1—The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time ordain and establish; in the Judges thereof, and in the Justices of Peace

Art. VI, Sec. 2—The jurisdiction of the Supreme Court shall be appellate only, under such restrictions and regulations as may from time to time be prescribed by law

Art. VI, Sec. 3—The Legislature shall have power to prescribe such rules as may be necessary to carry out the provisions of section two of this article.

Art. VI, Sec. 4—The Judges of the Circuit and Chancery Courts, and of other inferior Courts, shall be elected by the qualified voters of the district or circuit to which they are assigned. Every Judge of such Courts shall before his election, have been a resident of the circuit or district one year.

Art. VI, Sec. 8—The jurisdiction of the Circuit, Chancery and other inferior Courts, shall be as now established by law, until changed by the Legislature

Art. II, Sec. 10 Certiorari.—The Judges or Justices of the Inferior Courts of Law and Equity, shall have power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation.

Art. II, Sec. 11. Incompetency of judges—Special judges.—No Judge of the Supreme or Inferior Courts shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity of consanguinity, within such degrees as may be prescribed by law, or in which he may have been of counsel, or in which he may have presided in any inferior Court, except by consent of all the parties. In case all or any of the Judges of the Supreme Court shall thus be disqualified from presiding on the trial of any cause or causes, the Court, or the Judges thereof, shall certify the same to the Governor of the State, and he shall forthwith specially commission the requisite number of men, of law knowledge, for the trial and determination thereof. The Legislature may by general laws make provision that special Judges may be appointed, to hold any Courts the Judge of which shall be unable or fail to attend or sit; or to hear any cause in which the Judge may be incompetent.

Art. X, Sec. 1. Every person who shall be chosen or appointed to any office of trust or profit under this Constitution, or any law made in pursuance thereof, shall before entering on the duties thereof, take an oath to support the Constitution of this State, and of the United States, and an oath of office.

Art. XI, Sec. 16. The declaration of rights hereto prefixed is declared to be a part of the Constitution of the State, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare everything in the bill of rights contained, is excepted out of the General powers of the government, and shall forever remain inviolate.

STATUTES

16-10-101. General Jurisdiction.—The circuit court is a court of general jurisdiction, and the judge thereof shall administer right and justice according to law, in all cases where the jurisdiction is not conferred upon another tribunal. (Code 1858, Sec. 4225 (deriv. Acts 1835-1836, ch. 5, sec.7); Shan. Sec. 6063, Code 1932, sec. 10318; T.C.A. (orig. ed.), Sec. 16-501.)

27-8-101. Constitutional basis.—The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. (Code 1858, Sec. 3123 (deriv. Const. 1834, art. 6, sec. 10); Shan. Sec. 4853; Code 1932, sec. 8989; T.C.A. (orig. ed.), sec. 27-801.)

27-8-104. Power of circuit and chancery courts.—(a) The judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript thereof from any inferior jurisdiction, on sufficient cause supported by oath or affirmation.

CHAPTER 9

REVIEW OF BOARDS AND COMMISSIONS

(Copied in Appendix)

ATTORNEYS AT LAW

23-1-108 Procedure for admission
(Copied in Appendix)

Part 2-Disciplinary Proceedings

23-3-201 Grounds for disbarment or discipline
(Copied in appendix)

Public Acts of Tennessee General Assembly, 1955. Chap. 54

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That no person shall be granted or denied a license or right to practice law in Tennessee because he or she is or is not a member of any lawful Club, Association or Guild.

Supreme Court—Rule Making

16-3-401, 402 and 404

STATEMENT OF THE CASE

Appellant was licensed as a member of the Tennessee bar in 1925 and has been a duly licensed member in good standing ever since. He has enjoyed the highest rating in Martindale-Hubbell Law Directory ever since he first became eligible by his numbers of years of practice. At present has a permanent life rating of a.v.

Appellant by order of the Tennessee Supreme Court dated December 5, 1983 was suspended for a period of sixty days for disrespectful (though not untruthful) language concerning a decision of a state court of appeals in a brief which he filed in the Supreme Court applying for permission to appeal. Appellant filed notice of appeal to this Court from the order of

December 5th on December 7, 1983. He applied to the state Supreme Court for a stay of enforcement of the suspension until disposition of his appeal by this Court which was denied. He then applied to this Court for a stay which was denied by Justice O'Connor. The suspension period expired on February 4, 1984. The opinion of the Supreme Court ordering the suspension was designated for publication and has appeared in Southwestern Advance Sheets, January 17, 1984.

Appellant is prosecuting his appeal to this Court because: (a) of an important question as to the constitutionality of the rule of court made by the Tennessee Supreme Court integrating the bar and establishing what it termed "the disciplinary jurisdiction of the Supreme Court" and (b) appellant's honor is at stake.

The Main Question

By Public Acts of the Tennessee General Assembly, 1955, Chap. 54 it was provided:

> Section 1. Be it enacted by the General Assembly of Tennessee, that no person shall be granted or denied the license or right to practice law in Tennessee because he or she is or is not a member of any lawful Club, Association or Guild.

The Tennessee Supreme Court in a proceeding styled *Petition of Tennessee Bar Association for an order requiring Annual License Fee of all Practicing Attorneys for Disciplinary Purposes, and (2) Petition of Certain Lawyers for Organization of the State Bar,* 532 S.W.2d 224 (Dec. 18, 1975) on an intervening petition of thirteen (13) members of the state bar declared:

> This Court in the exercise of its inherent authority may require more of its officers than the legislature may prescribe in the exercise of its police power. We hold that *T.C.A. 29-110* (the 1955 Act) is an unconstitutional interference with this Court's power, violative of Article II, Sections 1 and 2, Constitution of Tennessee.

Appellant contends in this case that *T.C.A. 29-110* (Acts 1955, ch. 54) was a valid enactment under the constitutional system of Tennessee under which the legislature makes the laws and the jurisdiction of the Supreme Court is "appellate only, under such restrictions and regulations as may from time to time be prescribed by law." (Article VI, Sec. 2 of the Constitution.)

Exercising what it termed its "inherent" authority, the Supreme Court invented a new kind of jurisdiction (not appellate) "disciplinary jurisdiction."

By its Rule 42 the Supreme Court defined its "disciplinary jurisdiction" as follows;

> Jurisdiction
>
> 1.1 Any attorney admitted to practice law in this State and any attorney specially admitted by a court of this State for a particular proceeding is subject to the disciplinary jurisdiction of the Supreme Court, the Board, the hearing committees, hereinafter established, and the Circuit and Chancery Court.

The "disciplinary jurisdiction" of the state was divided into nine districts.

For Grounds for Discipline the Rule provided:

> Grounds for Discipline
>
> 3.1 The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.
>
> 3.2 Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the

Attorneys's Oath of Office, the Code of Professional Responsibility of the State of Tennessee, or T.C.A. Sec. 29-308, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

3.3 Conviction of a serious crime shall similarly be grounds for discipline as set forth in Section 14.

The Rule provided that the Supreme Court would appoint from among the licensed practitioners of law in the state a nine member board which has the authority to appoint a Chief Disciplinary Counsel and such assistant disciplinary counsel as might be needed from time to time.

The Supreme Court was to appoint one hearing committee within each disciplinary district, the members of each committee to be recommended by the President or Board of Directors of each local bar association or associations in the district.

All investigations, whether by complaint or otherwise, were to be initiated by the Board, acting through its Chairman or Vice-Chairman, and conducted by disciplinary counsel. Hearing commitees were to submit their findings and recommendations, together with the record of the hearing to the Board. The Board was to immediately serve a copy of the findings and judgment of the committee upon the respondent attorney and his counsel of record. Rule 8.3 provided that any petition for certiorari had to be filed in the circuit or chancery court having jurisdiction within 60 days of the mailing or service of such judgment.

Rule 1.3 provided that the review of the judgment of the hearing committee should be on the transcript of the evidence before the hearing committee, its findings and upon such other proof as either party may desire to introduce.

Origin of the Case

In a Reply Brief which appellant sought to file in the Supreme Court (and which was suppressed) appellant pleaded for a review of the judgment of the Court of Appeals by the Supreme Court in these words:

> "Another material fact which is not fairly disputed is the fact that the Court of Appeals made an *intentionally* false finding that the draftsman of the will was 'mistakenly informed as to the financial condition of a son of the testator.' The Answer of Union Planters makes much of the fact that petitioners filed three petitions to rehear in the Court of Appeals. The object of these petitions to rehear was to move the Court of Appeals to retract the unsupported finding that Mr. Martin was mistakenly informed and the further finding that the record reflects that the misrepresentations of Mr. Martin to the testator were made in good faith in the belief that they were true and accurate. It is this very fact that three attempts were made to obtain a correction of the Court of Appeals findings—all in vain—that justifies our characterization of them as being *intentionally* false.
>
> "THIS IS A CASE OF LIES—THE LIES TOLD TO THE TESTATOR BY MR. JOHN D. MARTIN, JR., AND THE LIES OF THE COURT OF APPEALS AND UNION PLANTERS BANK TRYING TO EXCULPATE MR. MARTIN.
>
> "In the concluding paragraph of the Answer it is said:
>
> " 'Moreover, incorrectness should not be a sufficient basis for review under the newly effective Tenn. R. App. P. 11 (a) and (e), unless exercise of discretion to review is going to be equated with reviewing the merits.'
>
> "We are unable to construe this sentence as anything other than a request to the Court to pay no attention to the lies. As such it amounts to a denigration of the Supreme

Court—the very idea that the Supreme Court and legislature of the State would adopt a rule precluding the Court from reviewing a case on appeal on the *merits!* Without going so far as to agree with Clarence Darrow that there is no such thing as justice in the courts or outside of the courts, we certainly have not degenerated to the point that our system is not concerned with the basic questions of honesty and truth but only with procedural and technical matters in disregard to whether they lead to truth and right or to falsehoods being allowed so as to do wrong.

"Union Planters urges the Court to take the *low* road to decision in this case. We urge the Court to take the *high* road to JUSTICE.

Respectfully submitted,
Fyke Farmer
Attorney for Petitioners,
James Edward Inman and
Mary Joyce Inman Behla"

The Supreme Court took the low road, denying the application for permission to appeal without giving an opinion stating the reasons and thereby approving the opinion of the Court of Appeals. Following the denial one judge of the Supreme Court, according to the deposition of Judge Shriver (accommodation informer)—whether or not with the connivance and approval of the other four members, though their failure and refusal to answer respondent's inquiry warrants the inference that they were in complicity with the action—surreptitiously utilized the court's controlled Disciplinary Board to attempt to bring odium on appellant for his justified animadversion on opinion of the Court of Appeals.

Every statement of fact contained in the reply brief, the subject of the complaint against appellant, was supported by evidence in the record and every averment and assertion made in the brief was pertinent to the issues raised by the appeal. Ap-

pellant's purpose in filing the brief was to perform the duty he owed to his clients by helping the courts discharge their duty to ascertain and declare the truth upon the issues presented instead of treating falsehood as the basis for judicial decision. This he understood to be his duty under the Code of Professional Responsibility adopted in Tennessee, EC 6-5, providing:

> A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

After appellant had filed a *quo warranto* case challenging the title of the members of the Supreme Court to their office, the members of the Court, acting vindictively, personally, privately and not officially, secretly and covertly instigated disciplinary proceedings against appellant before the Disciplinary Board which they had created and they have maintained this proceeding maliciously under their judicial immunity.

After the Disciplinary Board reported the judgment of the hearing committee which recommended sixty days suspension appellant filed a petition for writ of certiorari to obtain review of the hearing committee's decision in the Circuit Court of Davidson County.

In his petition appellant referred to par. 1.5 of Disciplinary Rule 42 providing that upon the filing of an appeal the Chief Justice of the Supreme Court would designate a duly elected and regular judge to try the case and that the judgment of the designated judge would be as effective as if he were the regular presiding judge of the court. The circumstances of the case were set forth specifically with the necessary factual statements. Appellant (petitioner) further averred:

> 9. Petitioner avers that in the circumstances of his case the manner of trial provided for by paragraph 1.5 would deprive him of his rights to a remedy for the injury done

his reputation by due course of law which is guaranteed by Article I, Sec. 17 of the State Constitution and of his property (the right to pursue his profession) in a manner not in accordance with the law of the land, contrary to the provisions of Article I Sec. 8 of the State Constitution; and besides would be a deprivation of his rights to the equal protection of the laws and due process of law under the Fourteenth Amendment to the United States Constitution, for the reasons that:

Due process of law requires a trial before an impartial tribunal. In this case the usurping judges are secret prosecutors or accusers of petitioner. The charges against him were heard by a hearing panel appointed by them. If he appeals in the manner authorized by paragraph 1.5 of Supreme Court Rule 9, he will have to submit to be tried by a trial judge specially designated by the Chief Justice of a *de facto* Supreme Court who, as has been set forth and shown, is interested in the outcome of the case.

10. In the exigency of this situation in which petitioner has been cast, he has no plain, speedy, or adequate remedy except to apply to a Judge of the Circuit Court in this county to exercise the power vested in him directly by the Constitution and the statutes of the state, instead of a judge designated by a *de facto* Supreme Court Chief Justice, who is interested in the outcome of the case, to grant the writ of certiorari to remove the cause from the unconstitutionally created Board controlled by the usurping judges of the Supreme Court for the determination of all the issues of law and fact involved by trial *de novo*, and to administer right and justice according to law for the protection of petitioner's constitutional rights to liberty and property.

THE PREMISES CONSIDERED, Petitioner asks:

a. That Your Honor order that a writ of certiorari issue to remove the proceedings against the petitioner, Pyke

Farmer, and the transcript of the record thereof, from the Board of Professional Responsibility of the Supreme Court of Tennessee to this Court; and after trial *de novo* in accordance with law Petitioner be exonorated from all of the charges of unprofessional conduct of which complaint was made.

b. For general relief.

Fyke Farmer
Pro Se

A regular judge of the Circuit Court granted the petition and ordered the transcript of the record to be filed in the Circuit Court. (Appendix p. A-17)

Disciplinary Counsel of the Board filed an answer to Petition and Return to Writ of Certiorari admitting that the Petition for Writ of Certiorari had been properly filed in the Circuit Court and that the Circuit Court had the power to grant the writ and further admitting that petitioner was entitled to a trial *de novo*.

Thereupon, the acting Chief Justice of the Supreme Court by letter designated a judge from the eastern part of the State to try the case instead of the regular judge for Davidson County Circuit Court.

The hand-picked judge without holding any hearing or even holding court in Davidson County handed down an order holding that the petition alleged no sufficient reason for the writ, with the toadyish explanation, "A trial court, as petitioner (who is a veteran lawyer) surely knows, must abide the rules and mandates of the Supreme Court." (A copy of the order is included in the Appendix, p. A-18)

Petitioner made a motion before The Honorable Walter Kurtz, the regularly elected judge of the Circuit Court of Davidson County, for an order expunging from the minutes and records of the court, the letter of William J. Harbison, as Chief

Justice of the Supreme Court, designating William H. Inman, Chancellor of the Fifteenth Chancery Division, to hear the matter, and to vacate and set aside all orders and judgments made by the said William H. Inman upon the grounds:

"Comes Fyke Farmer, Petitioner, and moves the Honorable Walter Kurtz, the regularly elected judge for this Circuit Court, to order to be expunged from the minutes and records of this Court the letter of William J. Harbison, Chief Justice of the Supreme Court designating the Honorable William H. Inman, Chancellor of the 15th Chancery Division, to hear this matter, and to vacate and set aside all orders and judgments made by the said William H. Inman upon the grounds:

"a) The Chief Justice had no authority to make such designation and oust the regularly elected judge of this Circuit Court from his jurisdiction to hear this matter;

"b) The Chief Justice was personally interested in the matter as one of the secret prosecutors of petitioner and his appointment of a judge other than the regularly elected judge to hear the matter violates petitioner's right under Sec. 8 of Article I of the State Constitution not to be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and his right under Sec. 17 of Article I of the State Constitution guaranteeing that all courts shall be open and that every man, for an injury done him in his reputation shall have remedy by due course of law, and right and justice administered without denial or delay; and his right to due process of law and the equal protection of the laws under the Fourteenth Amendment to the United States Constitution; and

"c) The said William H. Inman held no hearing in this case in the Courthouse of Davidson County or in any other place within Davidson County and deprived petitioner of the right of publicity which he demanded, and his judgment is wholly void.

"Petitioner further moves the regular judge to rule on the ground of his motion for summary judgment that the Board of Professional Responsibility of the Supreme Court has no lawful or constitutional existence."

Petitioner further moved the regular judge to rule on the ground of his motion for summary judgment that the Board of Professional Responsibility of the Supreme Court had no lawful or constitutional existence.

Judge Kurtz entered an order dismissing petitioner's motion upon the ground that he had no power to set aside an order of a Tennessee Supreme Court Justice or the prior actions of Chancellor Inman.

Petitioner makes application to the Court of Appeals for an alternative writ of mandamus to compel the Honorable Walter C. Kurtz, as the regular circuit judge to expunge from the minutes and records of the circuit court the letter from the chief justice designating the special chancellor to sit in the case and to vacate all orders and judgments of the said Chancellor Inman in the case. The Court of Appeals denied the petition for the writ as being without merit.

Appellant appealed from the Chancellor's orders to the Court of Appeals, which by statute had jurisdiction of appeals in cases for the review of Board and Commissions. (*T.C.A. 27-9-103; 27-9-112;* and of malpractice cases *Memphis and Shelby County Bar Association v. Himmelstein,* 165 Tenn. 102, 53 S.W. 2d 378) The Court of Appeals transferred the appeal to the Supreme Court in compliance with the provision in par. 1.3 of the Supreme Court's Rule 42 stating: Prior decisions of this Court holding that appeals of disciplinary proceedings must be taken to the Court of Appeals because *T.C.A. 16-408* so requires are expressly overruled.

Appellant filed a brief in the Supreme Court presenting the following questions for review:

QUESTIONS FOR REVIEW

Question 1. Is Supreme Court Rule 9, (formerly Rule 42), valid?

Appellant says answer is no.

Question 2. Does Supreme Court Rule 9, requiring as a condition to the right to practice law in any of the courts of the state the payment of a fee for admission and annually thereafter a fee for the continuance of the right, violate Art. 1, Section 17, of the Constitution of the State, which provides that the courts shall be kept open?

Appellant says answer is yes.

Question 3. Does the Supreme Court Rule 42 (now 9) deprive Appellant of a right or privilege to practice law granted by the State and constitute an impairment of a contract in violation of Article I, Sec. 20, of the State Constitution and Article I, Sec. 10, of the United States Constitution providing that no state shall pass any law impairing the obligation of contracts?

Appellant says answer is yes.

Question 4. Did the proceedings in this matter deprive Appellant of the right to due process of law in violation of both Article I, Section 17 of the State Constitution and the Fourteenth Amendment of the United States Constitution?

Appellant says answer is yes.

The Supreme Court in its opinion stated that appellant has persisted both in the trial court and in the Supreme Court in relitigating the validity of the disciplinary rules and procedures and has challenged the constitutionality of the entire disciplinary system. The opinion says that he had a full evidentiary hearing before the hearing panel and undertook to obtain a review of the order of the hearing panel by seeking a writ of certiorari in the Circuit Court of Davidson County. It said that

after examining the petition and the supporting record the trial judge Chancellor Inman, dismissed the petition, "since it did not comply with or properly seek review in accordance with Rule 9 of the Rules of this Court." Appellant submits that the Supreme Court has misconstrued both the order of the trial judge (the designated judge) and its own Rule 9. The designated judge said in his order that the petition revealed "no lawful reason why certiorari should be granted to review the disciplinary action taken against him." Rule 9 expressly provided that the respondent attorney was entitled to review in the manner provided by *T.C.A. 27-901,* that the review should be on the evidence before the hearing committee, its findings and judgment and upon "such further proof as either party may desire to introduce." Petitioner in his petition for certiorari specifically asked for a trial *de novo* in the circuit court in accordance with law. The trial judge by his summary order denied petitioner that right.

Appellant filed a timely petition to rehear raising constitutional questions which (Petition to Rehear and order appear in appendix at pp. A-9 and A-16) was denied by the Court without opinion.

The Reasons Why The Questions Presented Are So Substantial As To Require Plenary Consideration With Briefs On The Merits And Oral Argument For Their Resolution

First: the constitutional question

The 1955 act was a valid constitutional exercise of the police power by the state legislature. It has long been established by an unvarying line of decisions of the Supreme Court of the State that the legislature may enact any law not prohibited by the Constitution and the courts cannot strike down a statute unless it clearly contravenes some provision of the Constitution. The latest case appears to be *Holly v. City of Elizabethton*, 193 Tenn. 46, 241 S.W. 2d 1001.

The Supreme Court in its order integrating the bar conceding that the 1955 Act (T.C.A. 29-110) was passed by the legislature in the exercise of its police power, but held that it was an unconstitutional interference with the Court's power, violative of Article II, Sections 1 and 2, Constitution of Tennessee. The power of the Supreme Court's power under Article II, Section 1 and 2 was expressly stated to be *appellate only, under such restrictions and regulations as may from time to time be prescribed by law.*

Furthermore, by Article II, Sec. 3, it is provided that The Legislature shall have the power to prescribe such rules as may be necessary to carry out the provisions of section two of this article. The 1955 Act was manifestly within the constitutional provisions clearly vesting in the legislature the power to restrict and regulate the Supreme Court's appellate jurisdiction, the only jurisdiction it possesses. If it was necessary to integrate the bar as the Supreme Court has attempted to do, it was the legislature's power, not Courts, to do so under the power conferred by Section 3 on the legislature.

The Supreme Court, according to its order assumed some "inherent authority" to prescribe more of its officers than the legislature "may prescribe in the exercise of its police power".

(332 S.W. 2d 228) Inherent power is defined by Black's Law Dictionary as an authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving the right, ability, or faculty from another. The Tennessee Constitution in the very first article says that all power is inherent in the people and that the doctrine of non-resistance against arbitrary power and oppression is absurd. Article XI. Sec. 16 says that the declaration of rights prefixed is declared to be a part of the Constitution and shall never be violated on *any pretense whatever.* The Supreme Court was unable to point to any provision of the Constitution giving it the power to institutionalize "disciplinary jurisdiction". The inherent power it claimed is not derived from the Constitution in which the will of the people possessing inherent authority is expressed. The power which it claims is sovereign, omnipotent and arbitrary and subversive of our republican form of government.

Blackstone in the Introduction to his *Commentaries Book I, Section III, page 91* states:

> Lastly, acts of parliament that are impossible to be performed are of no validity: and if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void (32). I lay down the rule with these restrictions; though I know it is generally laid down more largely, that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it: and the examples usually alleged in support of this sense of the rule do none of them prove, that, where the main object of a statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government.

Secondly: The question of truth and falsehood, right and wrong
The Law of the Land

The Supreme Court in this case has acted in two capacities. First, acting in its judicial capacity it refused to review the decision of the Court of Appeals in the *Inman case* and denied appellant's application for permission to appeal thereby approving a judgment based on falsehood and wrong. Thereafter, doffing its judicial robes and in its capacity as supervisor of attorneys, its officers, and as manager of its created and appointed Disciplinary Board it has attempted to bring appellant to heel and pillory him for its own vindication. Finally, it, again acting in its judicial capacity, has endeavored to close the book by causing its judgment to be published as the law for the case.

The conduct for which punishment was inflicted is not misconduct constituting grounds for discipline in either of the laws or rules specified in par. 3.2 of Rule 9, namely the Attorney's Oath of Office, the Code of Professional Responsibility of the State of Tennessee, or *T.C.A. 29-308* changed to *23-3-201*. The Court in its order found appellant guilty of

> DR 8-102 (BO) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

All the findings are conclusory only. A fair and unbiased reading of the whole order fails to disclose that there was any evidence supporting this finding, or, for that matter, the other two findings based on the Code of Professional Responsibility.

One of the grounds in the statute setting forth grounds for disbarment or discipline is "unprofessional conduct, dishonest conduct, malpractice or any conduct which renders him unfit to be a member of the bar." There appears to be little authority on the precise question as to what constitutes unprofessional conduct. See annotation in *163 ALR p. 909* on the general subject. Generally it means dishonorable or immoral conduct. As a Kentucky case has said it means professional misconduct that shows the attorney to be lacking in "honesty, probity, and good

demeanor, or unworthy to continue as officers of the court, charged with the duty of aiding in the correct administration of the law." *Lenihon v. Com.* (1915) 165 Ky. 93, 176 S.W. 948 LRA 1917B 1132.

Appellant says now, as he has maintained throughout this ordeal, that his motive was not to degrade the Court of Appeals or the Supreme Court. He was trying to bring out the truth. He does not understand that this has ever been conduct unworthy of a member of the bar. Every accusation about a judge that he has made in this case has been supported by the record.

The Supreme Court found and held that his statements were gross, disrespectful and scurrilous. But, in a case decided by the very same Court, *State of Tennessee v. Beasley, Jr.*, 536 S.W. 2 328 (1976), it was declared by a unanimous court:

> While the only Tennessee case in point is a civil one, Stone v. O'Neal, 19 Tenn. App. 512, 90 S.W.2d 548 (1935) (accusation of perjury held no error), the majority of other jurisdictions considering the question have ruled that the remarks of counsel making reference to "lying" defendants or defense witnesses are allowed if based upon evidence in the record. People v. Reyes, 12 Cal. 3d 486, 116 Cal.Rptr. 217, 526 P.2d 225 (1974); People v. Weaver, 18 Ill.2d 108, 163 N.E.2d 483 (1959); People v. Charles, 58 Mich.App. 371, 227 N.W.2d 348, 357 (1975); State v. Franklin, 526 S.W.2d 86 (Mo. App. 1975); State v. Nelson, 103 N.H. 478, 175 A.2d 814 (1961); State v. Plowden, 126 N.J. Super, 228, 313 A.2d 802 (1974); State v. Noell, 284 N.C. 670, 202 S.E.2d 750 (1974).
>
> We hold that the remarks made by the District Attorney General were amply supported by the record and did not constitute error.

Is this giving the appellant the equal protection of the law?

Since the charges against appellant did not fall within any of the grounds of the statutes and established rules, the Court fell back on the catch-all provision of Rule 42(3.1)

> It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

There is no other definition of those "standards imposed upon members of the bar....". Imposed by whom? Not by the law. Not by any rules laid down in advance for general application. It manifestly means those standards imposed by the Supreme Court in the exercise of its "exclusive power to supervise the conduct of attorneys who are its officers." The Court has given the phrase its intended application in this case—the exercise of their absolute and unrestrained discretion, to give or withhold permission to carry on a lawful occupation, the practice of the law. This Court in *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 1 L. Ed. 2d 796, 77 S. Ct. 752, 64 A.L.R. 2d 288, said:

> Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their findings that he fails to meet these standards, or when their action is invidiously discriminatory. Cf. Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220.

Blackstone defines "law of the land" as "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong", *Commentaries Introduction Section II, page 44.* Dealing with the rights of persons he states that the right of personal security consists among other things in a person's legal and uninterrupted enjoyment of his reputation. *Commentaries Book First Chapter I, p. 129.*

Sisella Bok, in her recent widely-acclaimed book, *Lying Moral Choice in Public and Private Life, Vintage Books, N.Y. May 1979,* quotes Kant as follows:

> Thus the definition of a lie as merely an intentional untruthful declaration to another person does not require the additional condition that it must harm another, as jurists think proper in their definition (mendacium est falsiloquim in praeiudicium alterius). For a lie always harms another; if not some other particular man, still it harms mankind generally, for it vitiates the source of law itself.

The Tennessee Supreme Court, in its own self-interest, has failed to observe the distinction between truth and falsehood, right and wrong. *Farmer v. Board of Professional Responsibility of the Supreme Court of Tennessee,* 660 S.W. 2d 490 is a blot on the escutcheon of the American Judicial System. Yet, the foundation principles of the law of the land, like the law of the Medes and Persions altereth not.

The time is not far distant when appellant will cross the bourne to that country from which no one travels back. When he has to render his accounts he hopes not to be charged with any misconduct in this case. In order to attempt to square the accounts he is appealing to the only earthly authority he knows of that can remove or nullify the decision of the Supreme Court of Tennessee and clean the record of this case.

Respectfully submitted,

Fyke Farmer
1122 Stahlman Building
Nashville, Tennessee 37201

Pro Se

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

For Publication
November 7, 1983

FYKE FARMER,
Appellant,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Appellee.

Davidson Law
Hon. William H. Inman, Judge
by Designation.

For Appellant:
Fyke Farmer
Nashville, Tennessee

For Appellee:
William W. Hunt, III
Nashville, Tennessee

OPINION
(Filed Nov. 7, 1983)

AFFIRMED AND REMANDED — HARBISON, J.

After a full evidentiary hearing, a Hearing Panel found appellant guilty of violation of certain provisions of the Code of Professional Responsibility promulgated as Rule 8 of the Rules of the Supreme Court of Tennessee and containing the ethical standards relating to the practice of law and its administration. Appellant was ordered to be suspended from practice for sixty days.

It is not necessary to delineate in detail the evidence, which is uncontradicted. Appellant was cited for scurrilous and improper language in briefs which he himself filed, the authorship of which he admitted. Probably the most serious of these violations, and one which would clearly sustain the punishment imposed, even if all of the others were disregarded, is the following material which is quoted verbatim from a supplemental brief filed by appellant in connection with an application for permission to appeal a decision of the Court of Appeals to this Court:

> "Another material fact which is not fairly disputed is the fact that the Court of Appeals made an *intentionally* false finding that the draftsman of the will was 'mistakenly informed as to the financial condition of a son of the testator.' The Answer of Union Planters makes much of the fact that petitioners filed three petitions to rehear in the Court of Appeals. The object of these petitions to rehear was to move the Court of Appeals to retract the unsupported finding that Mr. Martin was mistakenly informed and the further finding that the record reflects that the misrepresentations of Mr. Martin to the testator were made in good faith in the belief that they were made in good faith in the belief that they were true and accurate. It is the very fact that three attempts were made to obtain a correction of the Court of Appeals findings—all in vain—that justifies our characterization of them as being *intentionally* false.
>
> "THIS IS A CASE OF LIES—THE LIES TOLD TO THE TESTATOR BY MR. JOHN D. MARTIN, JR., AND THE LIES OF THE COURT OF APPEALS AND UNION PLANTERS BANK TRYING TO EXCULPATE MR. MARTIN."

In his answer to the complaint, lodged by members of the judiciary and by three private practitioners, appellant consistently insisted that his statements were true and that he was

justified by the record in that case in calling a fellow practitioner and members of the Court of Appeals liars.

Further discussion is unnecessary. It has long been settled in this state that such conduct will not be countenanced in a court of law in this jurisdiction. In *Dupree v. State*, 219 Tenn. 492, 410 S.W.2d 890 (1967), this Court reversed a conviction which was otherwise supported by evidence because the District Attorney General called counsel for the defendant liars. This reversal occurred even though defense counsel had themselves been guilty of a violation of the then Cannons of Professional Ethics and had no doubt provoked the argument of the District Attorney General.

In *Ward v. University of the South*, 209 Tenn. 412, 354 S.W.2d 246 (1962), a lawyer was sharply reprimanded for asserting in a brief that the facts "gave the lie" to findings of the trial judge.

The statements made by appellant were even more gross, disrespectful and scurrilous. He testified at the trial that he had become exasperated because the Court of Appeals would not grant any of his petitions to rehear and said:

> "So I decided that I had to resort to—or I was justified in resorting to stronger tactics, more positive language to get the attention of the Court. And I did."

As stated by the Hearing Panel:

> "His decision to do so was unfortunate. Not only did it precipitate these proceedings, but also its implementing language is so far beyond the pale as to justify the imposition of sanctions, as hereinafter discussed."

For these and for other derogatory and defamatory statements made about members of the judiciary in other documents related to the same case the Hearing Panel found appellant guilty of the following provisions of the Code of Professional Responsibility:

"DR 1-102(A) A lawyer shall not:...

(5) Engage in conduct that is prejudicial to the administration of justice."

. . . .

"DR 7-106(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:...

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal."

. . . .

"DR 8-102(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

The record fully sustains the findings of the Hearing Panel and the suspension which it ordered.

Appellant undertook to obtain a review of the order of the Hearing Panel by seeking a writ of certiorari in the Circuit Court of Davidson County, Tennessee. Specifically, however, in that petition, he disavowed the provisions of Rule 9 of the Rules of this Court and its provisions for review. He disclaimed those Rules as being beyond the authority of this Court to promulgate, challenged the constitutionality of the entire disciplinary system which this Court has authorized, and challenged the election of the members of this Court in 1974. The letter claim was a subject which he had already litigated twice through the courts of this state and which two special Supreme Court panels had found to be completely without merit. *See Taylor v. Tennessee State Democratic Executive Committee*, 574 S.W.2d 716 (Tenn. 1978); *State ex rel. Inman v. Brock*, 622 S.W.2d 36 (Tenn. 1981), *cert. denied*, 454 U.S. 941 (1982).

Both in the trial court and in this Court appellant also has persisted in attempting to relitigate the validity of the disciplinary rules and the procedures prescribed therein, despite

the fact that they have repeatedly been held valid both by this Court and by the federal courts. *See Barger v. Brock*, 535 S.W.2d 337 (Tenn. 1976); *State ex rel. Carden v. Fones*, 539 S.W.2d 810 (Tenn. 1976); *Ex parte Chattanooga Bar Assoc.*, 566 S.W.2d 880 (Tenn. 1978); *Ables v. Fones*, 587 F.2d 850 (6th Cir. 1978).

In his petition to the trial court appellant never alleged that the findings of the hearing panel were not based on sufficient evidence or that the punishment was not justified, except that he insisted that his accusations against the judges and Mr. Martin were true and that he was justified in making them.

After examining the petition before him and the supporting record the trial judge dismissed the petition, since it did not comply with or properly seek review in accordance with Rule 9 of the Rules of this Court.

There is a serious question whether appellant has properly brought an appeal to this Court. He first appealed to the Tennessee Court of Appeals. That Court doubted that it had jurisdiction but referred the matter to the trial judge who then dismissed the original appeal. Appellant then sought to appeal, again to the Court of Appeals,[1] from the order dismissing the original appeal.[2] This is the only appeal presently pending, and it is questionable whether the appeal is timely or properly taken.

Nevertheless, disregarding that subject for the moment, it is apparent from appellant's brief that there is no issue presented which would entitle him to relief from the judgment of the

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[1] This was not an inadvertence by the appellant. It was part of his contention that Rule 9 §1.3, providing for an appeal to the Supreme Court in cases such as this is invalid. It is his contention that he was legally entitled to seek review in the Court of Appeals under T.C.A. §27-9-101 and T.C.A. §16-4-108.

[2] The Court of Appeals transferred the matter to this Court.

Hearing Panel. He presents four questions, all challenging the authority of this Court to promulgate Rule 9 and the procedures thereunder, including the authority of this Court to designate a trial judge to hear an appeal, rather than a local trial judge.

These issues are entirely without merit and do not warrant further consideration. Nor does appellant's motion to disqualify the members of this Court and to permit him to submit his allegations to still another special Supreme Court panel. That motion is denied. Appellant is being disciplined not for what someone else may have claimed that he did. He himself wrote the briefs and other documents in question and deliberately chose to use language and tactics which cannot be tolerated in the legal profession.

The judgment of the Hearing Panel and of the trial court are affirmed. All costs are taxed to appellant. The cause will be remanded to the trial court for collection of costs accrued there.

/s/ William J. Harbison, Justice

Fones, C.J., Cooper, Brock
and Drowota, JJ., concur.

APPENDIX B

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Fyke Farmer,
Appellant,

vs.

Board of Professional Responsibility
of the Supreme Court of Tennessee,
Appellee.

ORDER OF ENFORCEMENT

(Filed Dec. 5, 1983)

It appearing that this Court, by an opinion dated November 7, 1983 affirmed the suspension of appellant, Fyke Farmer, for a period of (60) sixty days. A petition to rehear was denied on December 5, 1983.

It is accordingly ORDERED, ADJUDGED and DECREED that Fyke Farmer be, and he hereby is, suspended from the practice of law in this state for a period of sixty days beginning the date of this order.

Entered this 5th day of December, 1983.

FOR THE COURT:

/s/ William J. Harbison, Justice

OFFICE OF THE CLERK OF THE SUPREME COURT
For The Middle Division Of The State Of Tennessee

I, RAMSEY LEATHERS, Clerk of said Court, do hereby certify that the foregoing is a true, perfect, and complete copy of the ORDER OF ENFORCEMENT of said Court, pronounced at its December term, 1983, in case of FYKE FARMER *against* BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE *as appears of record now on file in my office.*

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court at office in the Supreme Court Building at Nashville, on this, the 5th *day of* December, 1983.

/s/ Ramsey Leathers, *Clerk*

/s/ Margaret M. Faulkner, *Deputy*

APPENDIX C

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Davidson Law
Hon. William H. Inman, Judge
by designation

FYKE FARMER,
Appellant,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Appellee.

PETITION TO REHEAR OF FYKE FARMER, APPELLANT

Pursuant to Rule 39 of the Rules of Appellate Procedure, Appellant, Fyke Farmer, files this petition to rehear the opinion of the Court dated November 7, 1983 and for grounds thereof says:

I.

The Court's Opinion incorrectly states the material facts set forth in the record, i.e. the Petition for Writ of Certiorari filed in the Circuit Court and in the evidence given by Appellant as the Respondent before the Hearing Panel of the Board of Professional Responsibility with the exhibits, all of which are part of the record on appeal. The Court's Opinion fails to state that the "members of the judiciary" who lodged the complaint against Appellant before the Disciplinary Board of the Supreme Court were the justices then holding seats on the Supreme Court, Henry, Fones, Cooper, Brock and Harbison, not officially, but privately and covertly.

II.

It is true that appellant has consistently insisted that the statements in the supplemental brief filed by him as attorney which are quoted verbatim in the Opinion in this case on pages 2 and 3 are true and that he was justified by record in that case of calling his fellow practitioner and members of the Court of Appeals liars; and he does now so insist. It is undisputed that his statements were supported by the record in the case in which the brief was filed. The Court's opinion that this would not be countenanced in a court of law in this state, even though true and justified by the record in the case in which they were made, is in conflict by the decision of the same five judges, Henry, Fones, Cooper, Brock and Harbison, in the case of *State of Tennessee v. Beasley, Jr.*, 536 S.W. 2d 328 (1976).

III.

The Court in its Opinion stated that the election of the members of the Court in 1974 was challenged by petitioner (Appellant) in his Petition for Certiorari filed in the Circuit Court below and that the latter claim has already been challenged twice through the courts of the state and two special Supreme Court panels have found the challenges to be "completely without merit," citing *Taylor v. Tennessee State Democratic Committee*, 574 S. W. 2d 716 (Tenn. 1978); *State ex rel. Inman v. Brock*, 622 S. W. 2d 36 (Tenn, 1981), *cert. denied*, 454 U. S. 941 (1982). The Court misapprehended the effect of these decisions. Both decisions are void because the lower courts did not decide the question of whether the nominating procedure by which the said judges appeared on the ballots as nominees of the Democratic Party, was valid. Both special panels upheld the lower courts' decision that chancery courts had no jurisdiction of the quo warranto cases. As the lower courts had no jurisdiction neither did the Supreme Court on appeal in the exercise of its appellate jurisdiction have jurisdiction and the decisions are, therefore, void, and nullities.

IV.

The trial court, whose judgment dismissing the petition for the writ of certiorari has been affirmed, holding in these words:

> "A trial court, as petitioner (who is a veteran lawyer) surely knows, must abide by the rules and mandates of the Supreme Court.
>
> So must lawyers."

By the bill of Rights of the Tennessee Constitution (Art. I Sec. 8) it is provided that no man shall be disseized of his liberties or privileges or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land. The Constitution (Article XI Sec. 16) provides:

> Sec. 16. Bill of rights to remain inviolate. The declaration of rights hereto prefixed is declared to be a part of the Constitution of this State, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the General powers of the government, and shall forever remain inviolate.

As Chief Justice John Marshall declared in *Marbury v. Madison,* 1 Cranch, "The government of the United States has been emphatically termed a government of laws, and not of men." The law of the land which the Tennessee Constitution declares shall never be violated "on any pretence whatever" is based on the fundamental law defined by Blackstone as "a rule of action prescribed by the supreme power in a State commanding what is right, and forbidding what is wrong". The decision of this Court in this matter perverts this fundamental law, by putting falsehood on equal basis with truth as a rule of decision in the Courts of the state and subverts our government from one of laws to one of men.

The oath judges and lawyers take in the state is to support the Constitution and not the fiats of men happening to hold the seats of judicial power.

The trial judge by designation and the Court in this case confuse respect for the *office* of Supreme Court and the *occupants* of the office. The occupants forfeit their right to respect when they transgress the high powers delegated by the people through the Constitution to the Judiciary. The correct statement of the governing principles was made by the Supreme Court in *State v. McCann,* 4 Lea 1, as follows:

> Perfect deference for all that is the law of the land should be felt by all, but, if possible, this feeling should be deeper and more controlling in the Judge than in all others. This feeling of devotion, however, can legitimately only find its proper exercise when applied to what is law, and not to everything that is enacted.
>
> In proportion as we reverence law, and the law, should we feel it our duty to strike down whatever proposes or is proposed to take its place when found not entitled to or able to make good that claim. If this enactment is a law, then its mandates are imperative, before which all must bend, and which all Courts must promptly enforce. If not, it is to be obeyed by none.
>
> .....
>
> The question that presents itself in every enactment claiming to be a law is, does it conform to these Constitutions? If it does, then it is a law; if not, it has no title to reverence—is to be disregarded, declared null and void, and treated as never having been enacted.

The Court of Appeals in the Inman will case having made a material finding of fact unsupported by the record in the case was *coram non judice* and void according to the law declared by the Supreme Court in *Hill v. Hillsman,* 7 Lea 196, as follows:

> We are not aware of any principle upon which a court can look outside of the record of the case before it either to determine the rights when declared. Any order or decree not warranted by the pleadings in that case, or by some proceeding in accordance with the practice and usual course of the court, would be coram non judice, and an unjustifiable interference with the rights of the suitors. The jurisdiction of this court is, moreover, appellate only, and confined to the record.

The approval of the opinion of the Court of Appeals by the Supreme Court did not confer validity upon the Court of Appeals judgment. Paraphrasing Gertrude Stein's oft-quoted phrase, "a rose, is a rose, is a rose", Appellant says, "a void judgment, is a void judgment, is a void judgment".

The punishment of the writer for his justifiable characterization of the finding of the Court of Appeals because he did not submit to it like a private in the army still does not remove the defilement of the judicial system by the Supreme Court's approval of the void judgment.

V.

At the hearing when the case came on for argument on October 3, 1983, Appellant presented a motion to recuse the Justices which was denied or overruled from the bench without argument. In order that this motion may be made part of the record, Appellant moves that it be filed. A sworn copy of the motion is annexed hereto.

VI.

Appellant claims that the proceedings and judgment in this case deprived him of his right under the Fourteenth Amendment to the Federal Constitution to due process of law and entitled him to invoke the protection of the guaranty of the republican

form of government in Tennessee in Article IV, Sec. 2 of the United States Constitution.

/s/ FYKE FARMER, Appellant

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

DAVIDSON LAW
No._____

FYKE FARMER,
Appellant,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Appellee.

APPELLANT'S MOTION TO RECUSE JUSTICES

By *T. C. A. 17-2-102* it is provided that the judges of the Supreme Court, within the first week of the term, or as soon thereafter as the fact shall come to their knowledge, shall certify to the governor all cases upon the docket in which either of them is incompetent to sit.

Four of the judges now sitting on the Court having privately and covertly instigated the prosecution of Appellant before the Disciplinary Board of the Supreme Court as set forth in Appellant's Brief under question 4, page 32, are interested in the event of the cause and are required by Article VI, Sec. 11 of the Constitution to disqualify themselves. In accordance with the practice followed in *Freeman v. Felts,* 208 Tenn. 201, Judge Drowota should likewise recuse himself.

Appellant further says that under and by virtue of Article I, Sec. 8 of the Tennessee Constitution and the Equal Protection

and Due Process of Law clauses of the 14th Amendment to the United States Constitution, he claims the right to have his case tried before lawfully constituted impartial tribunals of the state, which neither the specially designated trial judge nor the judges now sitting on this Court are, the latter having secured their nominations as candidates of the Democratic Party in violation of *T. C. A. 2-13-203.*

/s/ Fyke Farmer

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Fyke Farmer makes oath that the foregoing motion is a true and correct copy of the motion presented to the Supreme Court at the hearing of the above case on October 3, 1983.

/s/ Fyke Farmer

Sworn to and subscribed before me this November 17, 1983.

/s/ Edith H. Dempsey
Notary Public

APPENDIX D

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Not designated for publication.
December 5, 1983

FYKE FARMER,
Appellant,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Appellee.

ORDER

(Filed Dec. 5, 1983)

A petition to rehear has been filed on behalf of appellant. After consideration of same the Court is of the opinion that the petition is not well taken, and the same is accordingly denied at the cost of appellant.

ENTER this 5th day of December, 1983.

/s/ William J. Harbison, Justice

APPENDIX E

IN THE FIFTH CIRCUIT COURT FOR
DAVIDSON COUNTY, TENNESSEE

NO. E-4612

FYKE FARMER,
Petitioner,

vs.

THE BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE,
Respondent.

ORDER GRANTING WRIT OF CERTIORARI

Upon consideration of the petition for writ of certiorari which is sworn to by petitioner, the Court being of the opinion that good cause therefor is shown, the writ of certiorari to remove the proceedings against petitioner, Fyke Farmer and the transcript of the record thereof from the Board of Professional Responsibility of the Supreme Court of Tennessee, as prayed for in the petition, is granted and it is Ordered that a copy of this Order be served upon said Board of Professional Responsibility of the Supreme Court of Tennessee as and for the writ of certiorari.

/s/ _____
JUDGE OF CIRCUIT COURT

APPROVED FOR ENTRY:

/s/ Fyke Farmer

APPENDIX F

IN THE CIRCUIT COURT FOR
DAVIDSON COUNTY, TENNESSEE

No. E-4612

FYKE FARMER

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY

ORDER

(Filed Sept. 23, 1981)

A writ of certiorari was granted to review the action of the Board of Professional Responsibility in suspending for 60 days the right of the petitioner Fyke Farmer to practice law.

Even a cursory review of the splenetic petition for certiorari reveals that it avers no lawful reason why certiorari should be granted. Petitioner merely persists in his continuing tirade against the Supreme Court; he does not aver even the slightest justiciable reason why certiorari should be granted to review the disciplinary action taken against him. The allegation that the decision of the hearing committee ("Panel") is erroneous is a mere conclusion and of no probative value in the absence of explication; the intemperate and ill-conceived attacks on the Supreme Court and its promulgated Rule are but sound and fury. A trial court, as petitioner (who is a veteran lawyer) surely knows, must abide the rules and mandates of the Supreme Court.

So must lawyers.

Petitioner also attacks, by motion for summary judgment, the right of the Supreme Court to designate a trial judge to hear this matter, and he requests a hearing before three named Circuit Judges purportedly in accordance with a local rule. This procedure is unauthorized.

The undersigned designated trial judge concludes:

(1) That the writ of certiorari was improvidently granted;

(2) That the petition for the writ alleges no sufficient reason for the issuance of the writ;

(3) That the "motion for summary judgment" should be, and is hereby stricken;

(4) That the Board should forward a copy of its judgment to the Clerk of the Supreme Court in Nashville for appropriate enforcement action;

(5) That the matter of the petition for certiorari shall be referred to the Board of Professional Responsibility for appropriate investigation and action.

/s/ William H. Inman
Designated Trial Judge

The Clerk of the Circuit Court will, upon filing hereof, forward certified copies to the petitioner, Fyke Farmer, and to the Chief Disciplinary Counsel.

/s/ William H. Inman
Chancellor

APPENDIX G

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Davidson Law

Fyke Farmer,
Appellant,

vs.

Board of Professional Responsibility
of the Supreme Court of Tennessee,
Appellee.

NOTICE OF APPEAL

Fyke Farmer, Appellant, hereby gives notice of his appeal to the United States Supreme Court from the judgment entered November 7, 1983, petition to rehear denied and Order of enforcement dated December 5, 1983, appeal taken under 28 U.S.C. 1257(2).

/s/ Fyke Farmer

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed by first class mail postage prepaid, a copy of the above Notice of Appeal to William W. Hunt, III, Disciplinary Counsel, Board of Professional Responsibility, The Supreme Court, Suite 405, 1101 Kermit Drive, Nashville, Tennessee 37217.

This 7th day of December 1983.

/s/ Fyke Farmer

December 7, 1983

RE:

FYKE FARMER

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE

NOTICE OF APPEAL to the United States Supreme Court

-and-

MOTION TO RECALL AND STAY MANDATE

FILED TODAY IN THE SUPREME COURT.

Ramsey Leathers, Clerk

APPENDIX H

IN RE: RULE 42—DISCIPLINARY ENFORCEMENT

ORDER

This Court declares that it has inherent and exclusive power to supervise the conduct of attorneys who are its officers and in furtherance thereof present Rule 42 is hereby stricken in its entirety and the following Rules of Disciplinary Enforcement are hereby promulgated.

MISCONDUCT

SECTION 1

Jurisdiction

1.1 Any attorney admitted to practice law in this State and any attorney specially admitted by a court of this State for a particular proceeding is subject to the disciplinary jurisdiction of the Supreme Court, the Board, the hearing committees, hereinafter established, and the Circuit and Chancery Court.

1.2 Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit any bar association from censuring, suspending or expelling its members from membership.

Review

1.3 The respondent or the Board may have a review of the judgment of a hearing committee in the manner provided by T.C.A. §27-901 et seq., except as otherwise provided herein. The review shall be on the transcript of the evidence before the hearing committee, its findings and judgment and upon such other proof as either party may desire to introduce. The trial judge shall weigh the evidence and determine the facts by the

preponderance of the proof. Either party dissatisfied with the decree of the circuit or chancery court may prosecute an appeal direct to the Supreme Court where the cause shall be heard upon the transcript of the record from the circuit or chancery court, which shall include the transcript of evidence before the hearing committee. Prior decisions of this Court holding that appeal of disciplinary proceedings must be taken to the Court of Appeals because T.C.A. § 16-408 so requires are expressing overruled.

1.4 An appeal from the recommendation or judgment of a hearing committee must be filed in the circuit or chancery court of the county wherein the office of respondent was located at the time the charges were filed with the Board.

1.5 The Chief Justice shall designate a duly elected and regular trial judge. It shall be his duty to try the case, and enter judgment upon the minutes of the circuit or chancery court of the county where the case is heard, and the judgment shall be effective as if he were the regular presiding judge of said court. The duty is imposed upon the clerks and the regular trial judge to promptly notify the Chief Justice of the filing of an appeal in disciplinary case.

SECTION 2

Disciplinary Districts

Disciplinary jurisdiction in this State shall be divided into the following districts:

District I—the counties of Johnson, Carter, Cocke, Greene, Hancock, Grainger, Jefferson, Sullivan, Washington, Unicoi, Hawkins, Claiborne, Hamblen and Sevier.

District II—the counties of Campbell, Anderson, Roane, Blount, Morgan, Union, Knox, Loudon and Scott.

District III—the counties of Polk, Hamilton, Sequatchie, Bledsoe, Meigs, Monroe, Bradley, Marion, Grundy, Rhea and McMinn.

District IV—the counties of White, Van Buren, Pickett, Putnam, Overton, Clay, Franklin, Moore, Bedford, Rutherford, Wilson, Trousdale, Warren, Fentress, Cumberland, Smith, Jackson, Coffee, Lincoln, Marshall, Cannon, DeKalb and Macon.

District V—the county of Davidson.

District VI—the counties of Giles, Wayne, Lewis, Maury, Humphreys, Cheatham, Montgomery, Robertson, Lawrence, Perry, Hickman, Dickson, Houston, Stewart, Sumner and Williamson.

District VII—the counties of Henry, Carroll, Henderson, Hardeman, Hardin, Benton, Decatur, Chester, Fayette, McNairy and Madison.

District VIII—the counties of Weakley, Ladke, Gibson, Haywood, Tipton, Obion, Dyer, Crockett and Lauderdale.

District IX—the county of Shelby.

SECTION 3

Grounds for Discipline

3.1 The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

3.2 Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office, the Code of Professional Responsibility of the State of Tennessee, or T.C.A. § 29-308, shall constitute

misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

3.3 Conviction of a serious crime shall similarly be grounds for discipline as set forth in Section 14.

SECTION 4

Types of Discipline

Misconduct shall be grounds for:

4.1 Disbarment; or

4.2 Suspension for an appropriate fixed period of time, or for an appropriate fixed period of time and an indefinite period concurrently or thereafter to be determined by the conditions imposed by the judgment. A suspension of three months or less shall not require proof of rehabilitation, a suspension of more than three months shall require proof of rehabilitation to be demonstrated in a reinstatement proceeding. No suspension shall be ordered for a specific period in excess of five years;[1]

4.3 Temporary suspension. On petition of the Disciplinary Board authorized by its Chairman or Vice-Chairman and supported by an affidavit demonstrating facts personally known to affiant showing that an attorney appears to be causing great public harm by misappropriating funds to his own use, or otherwise, the Supreme Court may issue an order with such notice as the Court may prescribe imposing temporary conditions of probation on said attorney or temporarily suspending said attorney, or both. Any order of temporary probation which restricts the attorney maintaining a trust account, shall, when served on any bank maintaining an account against which said

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[1] See Section 19.

attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court. Any order of temporary suspension issued under this Rule shall preclude the attorney accepting any new cases but shall not preclude his continuing to represent existing clients during the first 30 days after issuance of such temporary order; however, any fees tendered to such attorney during such 30 day period shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court. The attorney may for good cause request dissolution or amendment of any such temporary order by petition filed with the Supreme Court, a copy of which will be served on the Disciplinary Counsel. Such petition for dissolution shall be set for immediate hearing before the Disciplinary Board or a panel of at least three of its members designated by the Chairman of the Board or in his absence the Vice-Chairman. The Board or its designated panel shall hear such petition forthwith and submit its report and recommendation to the Supreme Court with the utmost speed consistent with due process. Upon receipt of the foregoing report, the Supreme Court shall modify its order if appropriate and continue such provisions of the order as may be appropriate until final disposition of all pending disciplinary charges against said attorney.

4.4 Public censure; or

4.5 Private reprimand; or

4.6 Private informal admonition.

SECTION 5

The Disciplinary Board of the Supreme Court of Tennessee

5.1 The Supreme Court shall appoint from among the licensed practitioners of law in Tennessee a nine member board to be known as "The Disciplinary Board of the Supreme Court of Tennessee" (hereinafter referred to as the "Board"), which shall consist of:

(a) Three members of the bar of this state appointed for an initial term of three years; and

(b) Three members of the bar of this state appointed for an initial term of two years; and

(c) Three members of the bar of this state appointed for an initial term of one year.

Subsequent terms of all members shall be for three years. No member shall serve for more than two consecutive terms. Vacancies shall be filled by the Supreme Court.

5.2 The Supreme Court shall designate one member as Chairman of the Board and another member as Vice-Chairman.

5.3 The Board shall act only with the concurrence of five or more members. Five members shall constitute a quorum.

5.4 Members shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

5.5 The board shall exercise the powers and perform the duties conferred and imposed upon it by these Disciplinary Rules, including the power and duty:

(a) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of these Disciplinary Rules.

(b) To appoint a Chief Disciplinary Counsel and such Assistant Disciplinary Counsel and staff as may from time-to-time be required to properly perform the functions hereinafter prescribed. The Chief Disciplinary Counsel and Assistant Disciplinary Counsel are hereinafter referred to as "Disciplinary Counsel."

(c) To assign periodically the members of hearing committees within each Disciplinary District to review and approve or

modify recommendations by Disciplinary Counsel for dismissals, informal admonitions and institution of formal charges.

(d) To review, upon application by Disciplinary Counsel, a determination by the reviewing member of a hearing committee that a matter should be concluded by dismissal or by provate informal admonition without the institution of formal charges.

(e) To privately reprimand attorneys for misconduct.

(f) To adopt rules of procedure not inconsistent with these Rules.

(g) The Board shall, to the extent it deems feasible, consult with officers of local bar associations concerning any appointment it is authorized to make under these Rules.

SECTION 6

Hearing Committees

6.1 The Supreme Court shall appoint one hearing committee within each Disciplinary District. Each committee shall consist of five members of the bar of this state who maintain an office for the practice of law within that District. Members of each hearing committee may be recommended by the President or Board of Directors of the local bar association or associations in the District.

6.2 When a hearing committee is first selected by the Court, three of its members shall be appointed for a term of one year, one member for a term of two years and one member for a term of three years. Thereafter all regular terms shall be three years and no member shall serve for more than two consecutive three-year terms. A member whose term has expired may continue to serve until the conclusion of any formal hearing commenced before him prior to the expiration of his term. A member who has served two consecutive three-year terms may be reappointed

after the expiration of one year. The committee shall act only with the concurrence of a majority of its members. Three members shall constitute a quorum. All formal hearings shall be conducted by three member panels, to be designated by the Board, and each panel so designed shall elect its own Chairman.

6.3 Hearing committees shall have the power and duty:

(a) Through the manner assigned by the Board, to review and approve or modify recommendations by Disciplinary Counsel for dismissals, informal admonitions and institution of formal charges.

(b) To conduct formal hearings into charges of misconduct upon assignment by the Chairman of the Board.[2]

(c) To submit their findings and recommendations, together with the record of the hearing, to the Board.

SECTION 7

Disciplinary Counsel

7.1 Disciplinary Counsel shall be licensed to practice law in Tennessee, but shall not be permitted to engage in private practice, except that the Board may agree to a reasonable period of transition after appointment.

7.2 Disciplinary Counsel shall have the power and duty:

(a) With the approval of the Board, to employ and supervise staff needed for the performance of his duties.

(b) To investigate all matters involving possible misconduct assigned to him by the Chairman or Vice-Chairman of the Board.

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[2] See Section 8.2 infra.

(c) To dispose of all matters (subject to review by the reviewing member of a hearing committee) involving alleged misconduct by dismissal, informal admonition, or the prosecution of formal charges before a hearing committee. Except in matters requiring dismissal because the complaint is frivolous and clearly unfounded on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by Disciplinary Counsel until the accused attorney shall have been afforded the opportunity to state his position with respect to the allegations against him.

(d) To prosecute all disciplinary proceedings and proceedings to determine incapacity of attorneys before hearing committees, trial courts, and the Supreme Court.

(e) To appear at hearings conducted with respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to inactive status because of disability, to cross-examine witnesses testifying in support of such petitions, and to marshal and present available evidence, if any, in opposition thereto.

(f) To file with the Supreme Court certificates of conviction of attorneys for crimes.

(g) To maintain permanent records of all matters processed and the disposition thereof.

SECTION 8

Procedure

Investigation

8.1 All investigations, whether upon complaint or otherwise, shall be initiated by the Board, acting through its Chairman or Vice-Chairman, and conducted by Disciplinary Counsel. Upon the conclusion of an investigation, Disciplinary Counsel may dismiss, informally admonish the attorney concerned or recommend the prosecution of formal charges before a hearing com-

mittee. If the recommended disposition is dismissal or informal admonition, it shall be reviewed by the reviewing member of a hearing committee in the appropriate Disciplinary District who may approve or modify. If the recommended disposition is the prosecution of formal charges before a hearing committee the Board shall review the recommendation and approve or modify. Disciplinary Counsel may appeal to the Board a dismissal or informal admonition directed by a hearing committee member. The Board may determine whether a matter should be concluded by dismissal, informal admonition, or direct that a formal proceeding be instituted before a hearing committee in the appropriate Disciplinary District and assign it to a hearing committee for that purpose. A respondent-attorney (hereinafter "respondent") shall not be entitled to appeal an informal admonition by counsel but he may demand as of right that a formal proceeding be instituted against him before a hearing committee in the appropriate Disciplinary District. In the event of such demand, the admonition shall be vacated and the matter disposed of in the same manner as any other formal hearing instituted before a hearing committee.

Formal Hearing

8.2 Formal disciplinary proceedings before a hearing committee shall be instituted by Disciplinary Counsel by filing with the Board a petition which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the petition shall be served upon the respondent. The respondent shall serve his answer upon Disciplinary Counsel and file the original with the Board within 20 days after the service of the petition, unless such time is extended by the Chairman. In the event the respondent fails to answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chairman to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect.

Following the service of the answer or upon failure to answer, the matter shall be assigned by the Chairman to a hearing committee.

If there are any issues of fact raised by the pleadings or if the respondent requests the opportunity to be heard in mitigation, the hearing committee shall serve a notice of hearing upon Disciplinary Counsel and the respondent, or his counsel, stating the date and place of the hearing at least 15 days in advance thereof. The notice of hearing shall advise the respondent that he is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in his own behalf.

8.3 The hearing committee shall, in every case, submit a record of its proceedings, its findings and judgment, in the form of a final decree of a trial court to the Board within 60 days after the conclusion of its hearing, including the submission of briefs, if any. The Board shall immediately serve a copy of the finding and judgment of the hearing committee upon respondent and his counsel of record, and any appeal therefrom must be filed in the circuit or chancery court having jurisdiction within 60 days of the mailing or service of such judgment.

8.4 If the judgment of the hearing committee or a trial court is that respondent shall be disbarred or suspended for any period of time in excess of three months and no appeal therefrom is perfected within said time, the Board or the trial court shall forward a copy of the decree of the hearing committee or the trial court to the Clerk of the Supreme Court for the grand division in which respondent maintains or maintained an office for the practice of law, and this Court shall enter an order of enforcement of said decree. All other decrees of hearing committees or trial courts shall be duly recorded in permanent records to be maintained by the Board, and shall have the force and effect of an order of this Court. Should any respondent fail to fully comply with such decree the Board shall immediately forward the record and decree to this Court for enforcement, together with its report of non-compliance.

SECTION 9

Complaints Against Board Members

Complaints against members of the Board involving alleged violations of the Attorney's oath of Office, the Code of Professional Responsibility or T.C.a. §29-308 shall be submitted directly to the Supreme Court. Complaints against hearing committee members or Disciplinary Counsel alleging violation of the attorney's oath or the Code of Professional Responsibility shall be submitted directly to the Board.

SECTION 10

Refusal of Complainant to Proceed, Compromise, Etc.

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, or compromise between the complainant and the attorney or restitution by the attorney, shall, in itself, justify abatement of the processing of any complaint.

SECTION 11

Matters Involving Related Pending Civil or Criminal Litigation

Processing of complaints shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized by the Board in its discretion, for good cause shown.

SECTION 12

Service

12.1 Service upon the respondent of the petition in any disciplinary proceeding shall be made by personal service, by any person authorized by the Chairman of the Board, or by registered or certified mail at the address shown in the most recent registration statement filed by respondent pursuant to Section 20.5 or other last known address.

12.2 Service of any other papers or notices required by these Rules shall, unless otherwise provided by these Rules, be made in accordance with Rule 5.02, Tennessee Rules of Civil Procedure.

SECTION 13

Supboena Power, Witnesses and Pre-trial Proceedings

13.1 Any member of a hearing committee in matters before it, and Disciplinary Counsel in matters under investigation by him, may administer oaths and affirmations and may obtain from the circuit or chancery court having jurisdiction, subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents. A respondent may, similarly, obtain subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents before a hearing committee after formal disciplinary proceedings are instituted.

13.2 Subpoenas shall clearly indicate on their face that the subpoenas are issued in connection with a confidential investigation under these Rules and that it is regarded as contempt of the Supreme Court or grounds for discipline under these Rules for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

13.3 The circuit or chancery court in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in the courts of this state.

13.4 Any attack on the validity of a subpoena so issued shall be heard and determined by the court wherein enforement of the subpoena is being sought.

13.5 Discovery proceedings by the respondent-attorney, prior to institution of proceedings for a formal hearing, may be had upon the order of the Chairman of the Board for good cause shown.

13.6 At the discretion of the hearing committee, a conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Said conference may be held before the chairman of the committee or any member of the committee designated by its chairman.

13.7 With the approval of the hearing committee, testimony may be taken by deposition or by interrogatories if the witness is not subject to service or subpoena or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved.

13.8 The subpoena and deposition procedures shall be subject to the protective requirements of confidentiality provided in Section 25.

SECTION 14

Attorneys Convicted of Crimes

14.1 Upon the filing with the Supreme Court of a certificate of conviction demonstrating that an attorney has been convicted of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Upon good cause shown, the Court may set aside such order restraining the attorney from engaging in the practice of law when it appears in the interest of justice so to do.

14.2 The term "serious crime" shall include any felony under the laws of Tennessee and any other crime a necessary element of which as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

14.3 A certificate of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him based upon the conviction.

14.4 Upon the receipt of a certificate of conviction of an attorney for a serious crime, the Court shall in addition to suspending him in accordance with the provisions of Section 14.1 of this Rule, also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in which the sole issue to be determined shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

14.5 Upon receipt of a certificate of a conviction of an attorney for a crime not constituting a serius crime, the Court shall refer the matter to the Board for whatever action it may deem warranted, including the institution of an investigation by Disciplinary Counsel, or a formal proceeding before a hearing committee, provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

14.6 An attorney suspended under the provisions of Section 14.1 of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not

terminate any formal proceeding then pending against the attorney, the disposition of which shall be determined by the hearing committee and the Board on the basis of the available evidence.

14.7 The clerk of any court in this state in which an attorney is convicted of a crime shall within ten days of said conviction transmit a certificate thereof to this Court.

14.8 Upon being advised that an attorney subject to the disciplinary jurisdiction of this Court has been convicted of a crime, Disciplinary Counsel shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to this Court in accordance with the provision of Section 14.7 of this Rule. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the Disciplinary Cunsel to obtain a certificate of the conviction and to transmit it to this Court.

14.9 An order suspending an attorney from the practice of law pursuant to this Rule shall not constitute a suspension of the attorney for the purpose of Section 18 unless this Court shall so order.

SECTION 15

Disbarment by Consent of Attorneys Under Disciplinary Investigation or Prosecution

15.1 An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to the Board an affidavit stating that he desires to consent to disbarment and that:

(a) His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting his consent;

(b) He is aware that there is presently pending investigation into, or proceeding involving allegations that there exist grounds for his discipline the nature of which he shall specifically set forth;

(c) He acknowledges that the material facts so alleged are true, and

(d) He submits his consent because he knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, he could not successfully defend himself.

15.2 Upon receipt of the required affidavit, the Board shall file it with this Court and this Court shall enter an order disbarring the attorney on consent.

15.3 The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of 15.1(a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

SECTION 16

Discipline by Consent

16.1 An attorney against whom formal charges have been served may thereafter tender a conditional guilty plea to the petition or to a particular count thereof in exchange for a stated form of punishment. Such a tendered plea shall be submitted to Disciplinary Counsel and approved or rejected by the Board upon recommendation of the hearing committee if the matter has already been assigned for hearing, subject, however, to final approval or rejection by the Court if the stated form of punishment includes disbarment, suspension or public reprimand.

16.2 A continuance in a hearing committee proceeding on the basis of such a tender shall be granted only with the concurrence

of Disciplinary Counsel. Approval of such a tendered plea by the Board, and if required, by the Court shall divest the hearing panel of further jurisdiction an no committee report need be prepared in such cases. The final order of discipline shall be predicated upon the petition and an approved tendered conditional guilty plea.

SECTION 17

Reciprocal Discipline

17.1 All attorneys subject to the provisions of this Rule shall, upon being subjected to professional disciplinary action in another jurisdiction, promptly inform Disciplinary Counsel of such action. Upon being informed that an attorney subject to the provisions of these Rules has been subjected to discipline in another jurisdiction, Disciplinary Counsel shall obtain a certified copy of such disciplinary order and file the same with the Board and with this Court.

17.2 Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, this Court shall forthwith issue a notice directed to the attorney containing:

(a) A copy of said order from the other jurisdiction; and

(b) An order directing that the attorney inform the Court, within 30 days from service of the notice, of any claim by the attorney predicated upon the grounds set forth in section 17.4 hereof that the imposition of the identical discipline in this State would be unwarranted and the reasons therefor.

17.3 In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this state shall be deferred until such stay expires.

17.4 Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of 17.2 above, this Court shall impose the identical discipline unless Disciplinary Counsel or

the attorney demonstrates, or this Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

(a) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(c) That the misconduct established warrants substantially different discipline in this State.

Where this Court determines that any of said elements exist, this Court shall enter such other order as it deems appropriate.

17.5 In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

SECTION 18

Disbarred or Suspended Attorneys

18.1 A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his disbarment or suspension and his consequent inability to act as an attorney after the effective date of his disbarment or suspension and shall advise said clients to seek legal advice of the client's own choice elsewhere.

18.2 A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, each of his clients who is involved in pending litigation or administrative proceedings, of his disbarment or

suspension and consequent inability to act as an attorney after the effective date of his disbarment or suspension. The notice to be given to the client shall advise the client of the desirability of the prompt substitution of another attorney or attorneys of the client's own choice in his place.

In the event the client does not obtain substitute counsel before the effective date of the disbarment of suspension, it shall be the responsibility of the disbarred or suspended attorney to move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

18.3 Orders imposing suspension or disbarment shall be effective on the date of entry in this Court. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature.

18.4 Within ten days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with this Court an affidavit showing: (1) That he has fully complied with the provisions of the order and with these Rules; (2) all other state, federal and administrative jurisdictions to which he is admitted to practice; and (3) that he has served a copy of such affidavit upon Disciplinary Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him.

18.5 The Board shall cause a notice of the suspension or disbarment to be published in the legal journal and in a newspaper of general circulation in each county in which the disciplined attorney maintained an office for the practice of law.

18.6 The Board shall promptly transmit a certified copy of the order of suspension or disbarment to all judges in this State.

18.7 A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him under these Rules so that, upon any subsequent proceeding instituted by or against him, proof of compliance with these Rules and with the disbarment or suspension order will be available. Proof of compliance with these Rules shall be a condition precedent to any petition for reinstatement.

SECTION 19

Reinstatement

19.1 No attorney suspended for more than three months or disbarred may resume practice until reinstated by order of the Supreme Court, except as provided in Section 20.4.

19.2 A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

19.3 Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Board and served upon Disciplinary Counsel promptly. Upon receipt of the petition the Board shall promptly refer the petition to a hearing committee in the Disciplinary District in which the petitioner maintained an office at the time of his disbarment or suspension. The hearing committee shall schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in law required for admission to practice law in this State and that his resumption of the practice of law within the State will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive of the public interest. The hearing committee shall within 30 days file a report containing its findings and decisions and

transmit same, together with the record, to the Board. Either party dissatisfied with the hearing committee's decision may obtain review thereof, as provided in Section 1.3 hereof.

19.4 If it is the decision of the hearing committee that petitioner be reinstated, the Board shall review the record, and within 60 days, either appeal as provided in Section 1.3 hereof or transmit to this Court the record of the proceedings before the hearing committee, together with its report approving same. This Court will take such action upon the record so transmitted as it deems appropriate. No attorney will be reinstated except by order of the Court.

19.5 In all proceedings upon a petition for reinstatement, cross-examination of the respondent-attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

19.6 Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time-to-time by the Board to cover anticipated costs of the reinstatement proceeding.

19.7 If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him; provided, however, that the judgment may make such reinstatement conditional upon the payment of all or part of the costs of the proceeding, and upon the making of partial or complete restitution to parties harmed by the petitioner's misconduct which led to his suspension or disbarment; and the reinstatement may be conditioned upon the furnishing of such proof of competency as may be required by the judgment, in the discretion of the Supreme Court, which proof may include certification by the Bar Examiners of the successful completion of examination for admission to practice.

19.8 *Successive Petitions*—No petition for reinstatement under this Rule shall be filed within three years following an

adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

SECTION 20

Periodic Assessment of Attorneys

20.1 Every attorney admitted to practice before this Court, except those exempt under 20.2, shall pay to the Clerk of this Court for the Grand Division wherein the attorney maintains an office on or before March 1, of each year an annual fee for each year beginning in 1976 to be set by the Court from time-to-time.

All funds collected hereunder shall be deposited in a depository designated by order of this Court, and withdrawals therefrom shall be made only upon resolution of the Board, by officers designated by the Board, for the purpose of defraying the costs of disciplinary administration and enforcement of these rules, and for such other related purposes as this Court shall from time-to-time authorize or direct.

The annual fee until further order of this Court shall be:

After Date of Admission To Practice Law	Annual Fee
Up to five years:	$15.00
Five years or more:	$25.00

20.2 There shall be exempted from the application of this rule:

(a) Attorneys who are non-residents of the state and no longer practice therein.

(b) Retired attorneys.

(c) Attorneys on temporary duty with the armed forces.

(d) Faculty members of Tennessee law schools who do not practice..

(e) Attorneys not engaged in the practice of law. The term, "the practice of law" shall be defined as any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy, in or out of court, rendered in respect to the rights, duties, regulations, liabilities or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document or law.

20.3 Any attorney who fails to timely pay the fee required under 20.1 above shall be summarily suspended, provided a notice of delinquency has been forwarded to him by certified mail, return receipt requested, addressed to his last known business addresss at least 30 days prior to such suspension, unless he shall have been excused on grounds of financial hardship pursuant to procedures to be established by the Board.

20.4 Any attorney suspended under the provisions of 20.3 above shall be reinstated without further order upon payment of all arrears and a penalty of 20% of the amount due from the date of his last payment to the date of his request for reinstatement.

20.5 To facilitate the collection of the annual fee provided for in 20.1 above, all persons required by this Rule to pay an annual fee shall, on or before March 1 of every year, commencing in 1976 file with the Clerk of this Court for the Grand Division wherein the attorney maintains an office a registration statement, on a form prescribed by this Court, setting forth his current residence and office addresses, and such other information as this Court may from time-to-time direct. In addition to such statement, every attorney shall file with the appropriate Clerk of this Court a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons first becoming subject to these Rules by admission to the practice of law before the courts of this State after January 1, 1976, shall file the statement required by this Rule at the time

of admission; but no annual fee shall be payable until March 1 next following such date of admission.

20.6 Within 30 days of the receipt of a statement or supplement therto filed by an attorney in accordance with the provisions of 20.5 above, the appropriate Clerk of this Court shall acknowledge receipt thereof, on a form prescribed by this court in order to enable the attorney on request to demonstrate compliance with the requirements of 20.1 and 20.5 above.

20.7 Any attorney who fails to file the statement or supplement thereto in accordance with the requirements of 20.5 above shall be summarily suspended; provided a notice of delinquency has been forwarded to him by certified mail, return receipt requested, addressed to his last known business address at least 30 days prior to such suspension. He shall remain suspended until he shall have complied therewith, whereupon he shall be reinstated without further order.

20.8 An attorney who has retired or is not engaged in practice shall advise the appropriate Clerk of this Court in writing that he desires to assume inactive status and discontinue the practice of law. Upon the filing of such notice, the attorney shall no longer be eligible to practice law.

20.9 Upon the filing of a notice to assume inactive status, an attorney shall be removed from the roll of those classified as active until and unless he requests and is granted reinstatement to the active rolls. Reinstatement shall be granted unless the attorney is subject to an outstanding order of suspension or disbarment or has been in inactive status for five years or more, upon the payment of any assessment ifn effect for the year the request is made and any arrears accumulated prior to transfer to inactive status. Attorneys who have been suspended or on inactive status for over five years before filing a petition for reinstatement to active status may be required, in the discretion of this Court, to establish proof of competency and learning in law which proof may include certification by the Bar Examiners

of his successful completion of an examination for admission to practice subsequent to the date of suspension or transfer to inactive status.

20.10 The courts of this state are charged with the responsibility of insuring that no suspended attorney be permitted to file any document, paper or pleading or otherwise practice therein.

DISABILITY

SECTION 21

Proceedings Where an Attorney is Declared to be Incompetent or is Alleged to be Incapacitated

21.1 Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability inactive status effective immediately and for an indefinite period until the further order of this Court. A copy of such order shall be served upon such attorney, his guardian, and/or the director of the institution to which he has been committed in such manner as the Court may direct.

21.2 Whenever the Board shall petition this Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate or assignment to a hearing committee for a formal hearing to determine the issue of capacity. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring him to disability inactive status on the ground of such disability for an indefinite

period and until the further order of this Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance.

The Court shall provide for such notice to the respondent of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if he is without adequate representation.

21.3 If, during the course of a disciplinary proceeding, the respondent contends that he is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent to adequately defend himself, the Court thereupon shall enter an order immediately transferring the respondent to disability inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of 21.2 above.

If the Court shall determine that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

21.4 The Board shall cause a notice of transfer to disability inactive status to be published in the legal journal and in a newspaper of general circulation in each county in which the disabled attorney maintained an office for the practice of law.

21.5 The Board shall promptly transmit a certified copy of the order of transfer to disability inactive status to the judges of all of the courts in the counties in which the disabled attorney maintained his practice and shall request such action under the provision of Section 22 as may be indicated in order to protect the interests of the disabled attorney and his clients.

21.6 No attorney transferred to disability inactive status under the provisions of this Rule may resume active status until reinstated by order of this Court. Any attorney transferred to disability inactive status under the provisions of this Rule shall be entitled to petition for reinstatement to active status once a year or at such shorter intervals as this Court may direct in the order transferring the respondent to disability inactive status or any modification thereof. Such petition shall be granted by the Court upon a showing by clear and convincing evidence that the atorney's disability has been removed and he is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney, and that the attorney establish proof of competence and learning in law, which proof may include ceertification by the Bar Examiners of his successful completion of an examination for admission to practice.

21.7 Where an attorney has been transferred to disability inactive status by an order in accordance with the provisions of 21.1 above and, thereafter, in proceedings duly taken, he has been judicially declared to be competent, this Court may dispense with further evidence that his disability has been removed and may direct his reinstatement to active status upon such terms as are deemed proper and advisable.

21.8 In a proceeding seeking a transfer to disability inactive status under this Section, the burden of proof shall rest with the Board. In a proceeding seeking an order of reinstatement to active status under this Section, the burden of proof shall rest with the attorney.

21.9 The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status because of disability shall be deemed to constitute waiver of any doctor-

patient privilege with respect to any treatment of the attorney during the period of his disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since his transfer to disability inactive status, and he shall furnish to this Court written consent to each to divulge such information and records as requested by court appointed medical experts.

SECTION 22

Appointment of Counsel to Protect Clients' Interests When an Attorney is Transferred to Disability Inactive Status Because of Incapacity or Disability, or He Disappears or Dies, or is Suspended or Disbarred

22.1 Whenever an attorney has been transferred to disability inactive status because of incapacity or disability, or he has disappeared or died, or has been suspended or disbarred and there is evidence that he has not complied with Section 18, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the senior judge in the judicial circuit, in which the attorney maintained his practice upon proper proof of the fact, shall appoint an attorney or attorneys to inventory the files of the inactive, disappeared, deceased, suspended or disbarred attorney and to take such action as seems indicated to protect the interests of the attorney and his clients.

22.2 Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the attorney to make such inventory.

SECTION 23

Additional Rules of Procedure

23.1 The record of a hearing shall be made available to the respondent at respondent's expense on request made to Disciplinary Counsel.

23.2 Except as is otherwise provided in these rules, time is directory and not jurisdictional. Time limitations are administrative, nor jurisdictional. Failure to observe such directory time intervals may result in contempt of the agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

23.3 Except as otherwise provided in these Rules, the Tennessee Rules of Civil Procedure apply in disciplinary cases.

MISCELLANEOUS PROVISIONS

SECTION 24

Expenses

The salaries of Disciplinary Counsel and staff, their expenses, administrative costs, and the expenses of the members of the Board and of hearing committees shall be paid by the Board out of the funds collected under the provisions of Section 20. The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition and shall file a copy of such audit with this Court.

SECTION 25

Confidentiality

All proceedings involving allegations of misconduct by or the disability of an attorney shall be kept confidential until and unless a recommendation for the imposition of public discipline is filed with the Supreme Court by the Board, or the

respondent-attorney requests that the matter be public, or the investigation is predicated upon a conviction of the respondent-attorney for a crime or, in matters involving alleged disability, this Court enters an order transferring the respondent-attorney to disability inactive status pursuant to Section 21, provided that, where review is sought pursuant to Section 1.3 the records and hearing in the circuit or chancery court and this Court of a disciplinary case shall be public to the same extent as other cases. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. This provision shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practce; or to law enforcement agencies investigating qualifications for government employment. In addition, the Board shall transmit notice of all public discipline imposed by the Supreme Court on an attorney or the transfer to inactive status due to disability of an attorney to the National Discipline Data Bank maintained by the American Bar Association.

EFFECTIVE DATE

The provisions of this Rule insofar as that relate to the establishment and organization of the new disciplinary system and the registration and assessment of attorneys shall take effect January 1, 1976.

The clerks of this Court shall take immediate steps to implement the registration and assessment of attorneys.

The Board shall take immediate steps to establish the office of Disciplinary Counsel and staff.

The transfer of pending disciplinary investigations shall be accomplished in an orderly manner after the establishment of the office of Disciplinary Counsel and in accord with subsequent orders of this Court.

All suits now pending involving the discipline of attorneys and any suit that may be instituted prior to the establishment of the office of Disciplinary Counsel and the designation by this Court of the effective date of this rule, for all purposes, shall proceed under the provisions of existing law and Rule 42 prior to this ammendment.

(s) Wm. H. D. Fones
(s)R. E. Cooper
(s)Joseph W. Henry
(s)Ray L. Brock, Jr.
(s)William J. Harbison

APPENDIX I

Review of Boards and Commissions

27-9-101. Right of review.—Anyone who may be aggrieved by any final order or judgment of any board of commission functioning under the laws of this state may have said order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter. [Code 1932, § 9008; modified; T.C.A. (orig. ed.), § 27-901.]

27-9-103. Circuit court jurisdiction.—The circuit court is given concurrent jurisdiction over such proceeding. [Code 1932, § 9018; T.C.A. (orig. ed.) § 27-903.]

27-9-109. Transcript of proceedings.—(a) Immediately upon the grant of a writ, the board or commission shall cause to be made, certified and forwarded to said court a complete transcript of the proceedings in said cause, containing also all the proof submitted before the board or commission.

(b) The clerk of said court shall promptly, by registered return-receipt mail, notify each party named as defendant in said petition of the filing of such transcript. [Code 1932, § 9012; T.C.A. (orig. ed.), § 27-909.]

27-9-11. Hearing—Findings.—(a) At the expiration of ninety (90) days from the filing of said transcript, the cause shall stand for trial, and shall be heard and determined at the earliest practical date, as one having precedence over other litigation, except suits involving state, county or municipal revenue.

(b) The hearing shall be on the proof introduced before the board or commission contained in the transcript, and upon such other evidence as either party may desire to introduce; provided, that all proof shall be taken and filed within seventy-five (75) days from the date upon which the transcript was filed, and said period for taking depositions shall not be extended by the court without extension or continuance.

(c) The chancellor shall reduce his findings of fact and conclusions of law to writing and make them parts of the record.

(d) In making such findings of fact the chancellor shall weigh the evidence and determine the facts by the preponderance of the proof. [Code 1932, § 9014; Acts 1951, ch. 261, § 1; T.C.A. (orig. ed.), § 27-911.]

ATTORNEYS AT LAW

23-1-108. Procedure for admission.—No person shall practice as an attorney, solicitor or counselor in any of the courts without a license obtained for that purpose, and without first having taken an oath, in open court, to support the constitution of the state and of the United States, and to truly and honestly demean himself in the practice of his profession to the best of his skill and abilities. [Code 1858, § 3965 (deriv. Acts 1798, ch. 2, §§ 2, 3; 1809 (Sept.), ch. 6, § 1); Shan., § 5772; mod. Code 1932, § 9970; T.C.A. (orig. ed.), § 29-108.]

23-3-201. Grounds for disbarment or discipline.—Any attorney, solicitor or counselor at law admitted to practice in the courts of the state may be disbarred from the practice of law:

(1) Who shall commit or may have committed, any infamous crime or misdemeanor involving moral turpitude.

(2) Who shall seek out any person having a claim for personal injury, or having any other ground for action, in order to obtain employment by such claimant or shall employ agents or runners for like purposes, or pay or reward directly or indirectly, those who bring, or influence the bringing, of such cases to him or his office.

(3) Who shall wrongfully retain money or property of his client for an unreasonable time after demand made.

(4) Who shall be guilty of any fraudulent act or misrepresentation in proceedings to obtain admittance to the bar.

(5) Who shall be guilty of any unprofessional conduct, dishonesty, malpractice, or any conduct which renders him unfit to be a member of the bar. [Acts 1919, ch. 42, § ; Shan. Supp., § 5781a1; mod. Code 1932, § 9974; T.C.A. (orig. ed.), § 29-308.]

SUPREME COURT

Part 4—Rule Making

16-3-401. Supreme Court rules of practice.—The Supreme Court may make rules of practice for the better disposal of business before it [Code 1858, § 450 deriv. Acts 1835-1836, ch. 3 § 19, Shan., § 6337; Code 1932, § 10638; T.C.A. orig. ed. § 16-311.]

16-3-402. Other courts—General rules of practice.—The Supreme Court of Tennessee shall have the power to prescribe by general rules the forms of process, writs, pleadings and motions, and the practice and procedure in all of the courts of this state in all civil and criminal suits, actions and proceedings [Acts 1965, ch. 227, § 1; 1975, ch. 376, § 1; T.C.A., § 16-112.]

16-3-404. Effective date of rules—Approval of rules by general assembly.—The Supreme Court shall fix the effective date of all its rules provided, however, that such rules shall not take effect until they have been reported to the general assembly by the chief justice at or after the beginning of a regular session thereof, but not later than the first day of February during such session, and until they have been approved by joint resolution of both houses of the general assembly [Acts 1965, ch. 227, § 3; T.C.A., § 16-114.]